



JCC:LMG
90-11-3-608A

U.S. Department of Justice

Environmental Enforcement Section
Environment and Natural Resources Division
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

file

Washington, D.C. 20530

August 13, 1993

VIA FEDERAL EXPRESS

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Re: United States v. NL Industries, Inc., et al.
Civ. Action No: 91-578-JLF
DOJ No: 90-11-3-608A

Dear Lou:

This letter is to confirm that the Defendants have consented to the reopening of the Administrative Record at the NL Site to allow additional administrative development concerning the residential soil cleanup standard. U.S. EPA will structure the comment period so as to permit a fair opportunity for the public to comment on the applicability and effect of the Granite City Health Study.¹

Again, on behalf of the Defendants, you have attempted to place additional "conditions" on the United States' unconditional offer to resolve this matter. We will not agree to these

¹Joseph Nassif, in his March 16, 1993 letter to the Court, represented that the Granite City Health Study would be released in a "few weeks." To date, the Study has not been released. Nevertheless, U.S. EPA does not intend to reopen the administrative record until IDPH releases the draft report of the study for public comment.

EPA Region 5 Records Ctr.



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conditions. Notwithstanding, these conditions are of no consequence.

Initially, you demand that the United States declare that Defendants' consent is without prejudice or waiver of any substantive or procedural rights. Specifically, you include the "right" to seek the appointment of a technical advisor. We know of no such rights. We are therefore unwilling to agree to our future position on some presently undisclosed right. As for Court appointed technical advisors, the United States does not contest that a technical advisor may have limited application under certain conditions. We do not believe that your consent to this administrative process will act as a bar to possible appointment of a technical advisor after the close of the new record. Of course, the United States does not believe that reopening this record will diminish any rights and claims it has against the Defendants. In particular, the United States is not waiving its rights to seek treble damages and civil penalties for the Defendants' continued failure to comply with U.S. EPA's Administrative Order issued on November 27, 1990. In addition, the United States will not jeopardize public health by delaying response actions at the Site. As we have previously informed you, the U.S. EPA intends to continue response actions at the most contaminated portions of the Site and those areas which present the greatest risk to the population.

You also "condition" your consent on the United States' good faith statement that certain information presented at a recent meeting in Washington, D.C. regarding Title X of the Housing and Community Development Act be considered by U.S. EPA in the new administrative record. If this material is presented to U.S. EPA during the comment period, and the information is relevant to the residential soil cleanup standard, then U.S. EPA, consistent with CERCLA and the NCP, will evaluate that material.

Finally, you request a statement on the procedure for reopening the record and reaching a decision in the context of the present case. U.S. EPA will continue to comply with CERCLA and the NCP. Generally, this consists of publishing notice in a local newspaper that U.S. EPA is accepting written comments for a period of 30 days on the appropriate cleanup standard for lead in residential soil at the NL Site.² Although not required by the CERCLA or the NCP, the United States will also notify the Court and the defendants of the start of this comment period. All relevant written comments submitted during the comment period will be added to the existing record, as well as U.S. EPA's response to those comments. If, after a review of the comments,

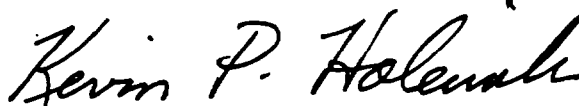
² U.S. EPA, of course, reserves the right to include additional issues in the comment period, if appropriate.

a change in the existing Record of Decision (ROD) is warranted, U.S. EPA will adjust the ROD accordingly. U.S. EPA will certify for the Court the new administrative record.

We look forward to your response.

Sincerely,

Assistant Attorney General
Environment & Natural Resources Division

A handwritten signature in black ink, reading "Kevin P. Holewinski". The signature is written in a cursive style with a large, stylized "K" and "H".

by: Kevin P. Holewinski
Environmental Enforcement Section
(202) 514-5293

cc: Honorable Judge James L. Foreman
All Counsel of Record